

CHARLOTTE COUNTY PLANNING AND ZONING BOARD
Administration Center, 18500 Murdock Circle, Room 119,
Port Charlotte, Florida
Minutes of Regular Meeting
December 8, 2014 @ 1:30 p.m.

Call to Order

Chair Hess called the meeting to order at 1:30 p.m. and upon the Secretary calling the roll, it was noted a quorum was present.

Roll Call

PRESENT

Paula Hess
Michael Gravesen
Ken Chandler
Stephen Vieira
Paul Bigness

ABSENT

ATTENDING

Joshua Moye, Assistant County Attorney
Gayle Moore, Recording Secretary

APPROVAL OF MINUTES

The minutes of November 10, 2014 were approved as circulated.

ANNOUNCEMENTS

Upon the oath being administered, and the Chair polling Board members as to any ex parte communications to declare (there were none) the meeting commenced.

PETITIONS:

SE-14-010

Quasi-Judicial

Commission District I

Michael Haymans, agent for S&S Money Auto Repair, is requesting a special exception, according to section 3-9-7(b)(3) and 3-9-7(m) of the Zoning Code, to allow the expansion of a lawfully existing conforming use to property which is abutting the existing use. This special exception is intended to allow expansion of an auto repair and U-Haul rental business in the Charlotte Harbor Coastal Residential-3.5 (CR-3.5) zoning district. The property address is 23371 Harborview Road, Charlotte Harbor, and is described as Lots 6, 7, 8, 9 and 10 of Block "A", all being a part of Shelton's Addition to Hickory Bluff Subdivision, located in Section 25, Township 40 South, Range 22 East.

Staff Presentation

Ken Quillen, Planner III, presented the findings and analysis of the petition and of the staff report dated November 21, 2014, giving brief details regarding the request, and noting that one part of the property originally included in the petition has been withdrawn based on a recommendation by the Charlotte Harbor CRA (CHCRA). He noted that the petition was the result of a zoning code violation concerning the outdoor storage of rental trucks, trailers and vehicles on residential property; the current proposal is the result of a meeting with staff, which staff is now endorsing based on a proposed FLUE amendment that would change the property FLUM be changed from Coastal Residential to Commercial, which the CHCRA is endorsing. **Mr. Quillen**

noted this amendment would be presented to the Board in January. He described the site plan submitted by the applicant, and noted that the plan and its elements of access, paving, traffic circulation, landscaping, stormwater systems, as well as the design for the parking, must be reviewed and approved according to the Site Plan Review process. A type D landscape buffer is required by Code, along three of the property lines which abut the Coastal Residential zoning district and along Homewood St. He also noted that there were six standards that must be met for the Board of Zoning Appeals to approve a Special Exception, which are enumerated in the staff report. Staff is recommending approval of the petition, subject to four criteria also listed in the staff report.

Questions for Staff

None

Applicant's Presentation

Michael P. Haymans, Esq. agent for the Petitioner, stating that he has been sworn, gave brief description of the conditions leading to the request. The applicant's garage which was located at the base of the bridge in Punta Gorda was damaged in Hurricane Charley, leading the business to relocate to Charlotte Harbor, where the Comp Plan and Zoning regulations had indicated would be appropriate; they went through the Planned Development process on their property, and now have a nice building and site where a number of businesses operate. However, it eventually was determined that the property was too narrow for the uses they intended, and for five years they cobbled together a solution for their U-Haul rental business that impinged on their neighbor's property, and this now needs to be corrected.

Mr. Haymans provided details regarding issues with the underlying land use which were resolved due changes to the Comp Plan which allowed the applicant to consider options for increasing the depth of the property; he emphasized that the CHCRA felt this change was appropriate. He noted that until the actual Comp Plan change has been adopted, there are elements of the Petitioner's proposal that can't be achieved, and so any approval on this matter would need to include reference to the anticipated Comp Plan change.

Mr. Haymans also commented on the position of the neighbor whose property is most impacted by the conditions on the Petitioner's property; he handed out graphic materials showing the view from this neighbor's windows to demonstrate the issues, and also a graphic of the Type D buffer which would be imposed on the property. Further details were discussed about potential lot and building design elements that would accommodate both the petitioner and his neighbor and more detail was offered regarding how the changes will be consistent with the neighborhood, based on buffering that will be put into place; there will be no lights, just storage for the existing businesses, not a junkyard.

Mr. Bigness asked about the business there; **Mr. Haymans** responded that it was a U-Haul and repair shop, just as it was when it was in Punta Gorda, and he noted that there are other businesses that are tenants on the Planned Development part of the property. Mr. Bigness asked if the U-Haul business was new since the business relocated to Charlotte Harbor, and Mr. Haymans said that it was a continuation of the U-Haul business the petitioner had in Punta Gorda; the neighbor of the petitioner objected, saying the U-Haul business was only running at this location within the last couple of years. At the Chair's request, Mr. Bigness repeated his question regarding the scope of the business prior to the move to Charlotte Harbor and whether it has been expanded. Mr. Haymans responded with additional clarification: that there was a U-Haul business in Punta Gorda, it was intended to continue as a business after the move to Charlotte Harbor. The business

has been running without the proper approvals, however, and this petition seeks to get those approvals.

Mr. Quillen indicated he had labeled the handout from Mr. Haymans as Exhibit "G". **Chair Hess** consulted with Assistant County Attorney Josh Moyer regarding the status of written submittals to a quasi-judicial hearing; **Mr. Moyer** noted that such material can be read into the record.

Public Input

Mr. Dan Eliassen, resident of the property adjacent to petitioner's. He said that he was aware of the light industrial section on Harborview Rd. and felt he could live with that. The petitioner's business came there in about 2004, receiving a Commercial Intensive zoning for the property, which **Mr. Eliassen** said he was also OK with. He said that he had a cordial relationship with the petitioner, including a business relationship (e.g., use of the petitioner's business services.) However, **Mr. Eliassen** said, he now feels the petitioner is breaking the zoning badly and is only now asking permission to do so. In particular, the business is now encroaching on Block A behind his business, storing wrecked vehicles and boats, as well as dumpsters containing trash.

Mr. Eliassen stated that there was no U-Haul business on the property until about three years ago; for the last two or three years, the petitioner had been storing for U-Haul up to 15 30-foot trucks and 15 to 20 U-Haul trailers and car haulers. He is seeking the special exception to continue with this.

Mr. Eliassen said that he wanted to speak specifically to the six standards required for granting of a Special Exception:

1. He asked if the County intended to allow a Special Exception based on the prior Special Exception already awarded; especially since petitioner is well aware that this is residentially zoned, and the use is not compatible.
2. Petitioner's intended use of the property is not compatible with the neighborhood and every resident adjacent to the subject property is opposed to this change; they object to the noise, dirt, and depreciation of property values. Petitioner leaves heavy vehicles parked on Homewood St., on the verge, and more will come.
3. No buffer of any kind exists (**Mr. Eliassen** noted that Mr. Haymans had addressed this issue with him directly, but wanted to include it anyway.) He also noted that there is no provision for dirt, oil or water run-off. There is nothing to mitigate the effect of the storage yard but what he characterized as a broken-down wooden fence which is an eyesore.
4. **Mr. Eliassen** noted that his house overlooks Block A and that is the view from his second story. He feels that the presence of the business devalues his property, and would discourage potential buyers.
5. He said he did not believe the Planning Committee intended changes such as this; if so, they would have changed the neighborhood zoning earlier.
6. The 24/7 commercial use of Homewood St. would be detrimental to the health and welfare of the neighborhood. It would endanger residents, pets and kids.

In conclusion, **Mr. Eliassen** said, petitioner has consistently ignored the regulations, and there has been no code enforcement ever. He also indicated that this situation had impacted his previous good relations with the Petitioner after years in which he displayed tolerance for the business.

Chair Hess asked whether he felt the buffer would improve matters; **Mr. Eliassen** answered that a fence would have to be 30 ft. high or there's no impact on the view from his second story.

Mr. Moya commented on the materials that Mr. Eliason had handed out; **Mr. Quillen** indicated he had labeled these materials as Exhibit "H-1" through "H-9"

Another gentleman, also a neighbor, (who did not state his name for the record) stated he supported all of the details Mr. Eliassen had offered, and spoke at some length about how upset he was about the change that the business had wrought on the neighborhood, the visual degradation and the safety issues. He expressed concern about the other property, Lot 1, Block D, where a load of dirt was dumped by heavy vehicles, and also mentioned loud music late at night.

- **Mr. Gravesen** moved to close the public hearing, second by **Mr. Chandler** with a unanimous vote.

Mr. Haymans' Rebuttal

Mr. Haymans returned to the podium to clarify some points. Mr. Eliassen had said that the petitioner had already had a Special Exception on the property; **Mr. Haymans** stated that is incorrect, it was a Planned Development, which is a very rigorous zoning process he went through. He also stated that petitioner is not planning to intrude any further into the neighborhood, he is just getting the permissions straight for activity already accomplished. Responding to Chair Hess, Mr. Haymans clarified petitioner is not seeking to change the zoning. **Mr. Haymans** also offered an explanation for the noise and dumping of dirt, which were characterized as errors, not on-going issues.

Mr. Haymans indicated that he objected to Mr. Eliassen's complaint of a ruined view because the "focus is all in their backyard" – all the Eliassen family activities take place in their back yard where they have a pool and other amenities. Further discussion ensued on the agent's representation that the petitioner's activities on the subject property are simply for storage purposes.

Mr. Vieira asked if the existing fence was going to remain; **Mr. Haymans** replied that the fence will remain plus there will be the required buffering. In response to further questions about additional buffering **Mr. Haymans** indicated that petition will provided it if required to do so.

Chair Hess asked staff whether the BZA can be sure that the use won't change in future, and asked how that can be controlled. **Mr. Quillen** stated that a Special Exception can be conditioned by the BZA; petitioner would have to follow those conditions as well as the zoning requirements, and this includes the BZA establishing the "one and only use" that can be held on this property. **Mr. Moya** confirmed that the Special Exception can have conditions, and if there is a problem, then it is Code Enforcement matter.

Chair Hess asked for Mr. Vieira's input, since he is a member of the BZA also. **Mr. Vieira** responded that he felt the BZA was the proper venue for this matter; that the conditions attached and any others that the BZA wanted to attach would probably serve the neighborhood and the applicant best. **Chair Hess** asked if he had visited the site, which he indicated he had done; he stated his opinion that while it is cleaned up now, he has seen it in less desirable conditions in the past. **Chair Hess** said that she thinks the use was an intrusion into a residential area.

Mr. Gravesen gave his opinion next, stating that he agreed that it was an intrusion into the residential zone; he also said that when the applicant originally came in for the PD, all that should have been planned for if they already had the U-Haul business in Punta Gorda and knowing the storage requirements for that. He also agreed that the neighborhood streets are not good for this kind of traffic, just light residential traffic. He stated he was not in favor of the petition.

Chair Hess also noted that this type of business is not CG, it's CI. **Mr. Chandler** asked about a set of photos that had been turned in; **Mr. Eliason** identified them as being from the opposite of the lot. **Mr. Haymans** conceded that the pictures show a dumpster, wrecked cars, and other junk. **Mr. Chandler** gave his opinion that this is a nightmare in the making; it is the owner's responsibility to clean it up or the mess draws more trash onto it. **Mr. Chandler** stated also that he's not comfortable with a 15-ft. wide street where kids are playing, having this kind of traffic on it; it's a recipe for disaster.

Mr. Bigness indicated he wanted to question **Mr. Eliassen** again; **Mr. Eliassen** returned to the podium and first clarified that the pictures he distributed were taken yesterday afternoon. Mr. Bigness asked about the assertion that vehicles were being test-driven on the roads, and asked how he knew that as a fact; **Mr. Eliassen** stated that he can see the entire shop, including the bay doors on the west side of the building, so he can see the cars going in and out. He continued, saying that he knew the guys at the shop and how they work; they never go out on Harborview Rd. to test drive cars, they stay on Homewood Street.

Mr. Haymans said that he just wanted to point out that Mr. Eliassen is complaining about the garage activities; the requested change will not affect that business, it will just make the situation better with the buffering. In closing, he reiterated that the CHCRA has considered this request and is in favor of expanding that use.

Discussion

Chair Hess noted the vote will be a recommendation to the BZA, and they will make the final decision; she then requested Mr. Vieira to make the motion;

Recommendation

Mr. Vieira moved that petition SE-14-010 be forwarded to the Board of Zoning Appeals with all of the conditions which had been applied, with a recommendation of *Disapproval*, based on the findings and analysis in the staff report dated November 21, 2014, along with the evidence presented at today's meeting, second by **Mr. Gravesen** and carried by a unanimous vote.

Mr. Bigness commented that he felt the decision balanced that with Charlotte County's model of "Open for Business" and that while he personally supports small business, he thinks it is also necessary to factor in homeowners who have been present since before those conditions came into being.

PV-14-10-01

Legislative

Commission District I

Kendall and Tracie Baird are requesting a Plat Vacation for a portion of the plat of Harbour Heights Section Eleven Subdivision as recorded in Plat Book 6, Pages 13A-13D, of the Official Records of Charlotte County, Florida. The property is 1.38 acres, more or less, and is located east of Blanot Drive, north of Amsterdam Drive, west of Marical Terrace, and south of San Carlos Drive, in Section 10, Township 40, Range 23, in Commission District I.

Staff Presentation

Steven Ellis, Planner II, presented the findings and analysis of the petition with a recommendation of *Approval*, based on the reasons stated in the staff report dated November 17, 2014, giving brief details regarding the request. This vacation is necessary in order to complete the conditions of the rezoning recently approved by this Board, and awaiting approval by the Commission at their meeting tomorrow.

Questions for Staff

None.

Applicant's Presentation

Mr. & Mrs. Baird indicated they had nothing to add to the presentation but just wanted to ask for approval.

Public Input

None.

- **Mr. Vieira** moved to close the public hearing, second by **Mr. Gravesen** with a unanimous vote.

Discussion

Chair Hess indicated she was in favor of recommending approval. **Mr. Vieira** noted he is no longer in opposition to this project, now that he is aware of where the boundaries of the Urban Service Area are located.

Recommendation

Mr. Vieira moved that PV-14-10-01 be sent to the Board of County Commissioners with a recommendation of *Approval*, based on the findings and analysis in the staff report dated November 17, 2014, along with the evidence presented at today's meeting, second by **Mr. Gravesen** and carried by a unanimous vote.

PP-14-10-01

Quasi-judicial

Commission District I

HRES Heritage Lake, LLC has requested Preliminary Plat approval for a subdivision to be named, Family Dollar at Heritage Lake Park, a replat of a portion of Heritage Lake Park as recorded in Plat Book 19, Page 15, of the Official Records of Charlotte County, Florida. The site is 2.65 acres, more or less, and is located south of Rampart Boulevard, north of Ibis Trail, east of Luther Road, and west of Heritage Lake Boulevard, in Section 17, Township 40, Range 23, in Commission District I.

Staff Presentation

Steven Ellis, Planner III, presented the findings and analysis of the petition with a recommendation of Approval, based on the reasons stated in the staff report dated November 17, 2014, and also giving Board members a caution regarding the amount of emails voicing opposition to the project which have been received; he handed out copies of these emails while **Mr. Moye** commented on the weight to be given to such communications in a quasi-judicial hearing. Because the emails do not represent sworn testimony, he suggested that Board members keep that in mind and that the applicant does not have the opportunity to cross-examine any of the email authors.

Mr. Ellis continued his presentation by addressing two common misconceptions: This petition is not requesting a rezoning, and it's not about the store – the petition is concerned only with the division of the land. He then noted that part of the property has been sold since the petition was received, the owner accomplishing by deed part of what the petition requests, rendering the petition redundant. However, the petition is in good shape to move forward, although he noted that there is a problem with the documentation provided by applicant which is being addressed. Therefore, one condition of approval is that the applicant must prepare and submit the proper plat document prior to the BCC hearing.

Chair Hess cautioned the audience members who would be addressing the Board during Public Input that this petition is not a request for rezoning and reminded the audience members that this property has been zoned Commercial since at least the 1980s.

Questions for Staff

None.

Applicant's Presentation

None

Public Input

Ms. Sandra Rumbolo asked for someone to restate the purpose of the application in "common language". **Chair Hess** explains the point of a plat redrawing the boundary lines on the land, and dividing one parcel into two. **Ms. Rumbolo** asked whether there was anything the public could say here regarding this project being a big intrusion into a residential neighborhood; **Mr. Moyer** explains what "commercial" allows, and noted that the property has been this zoning for years. **Mr. Shaun Cullinan, Planning and Zoning Manager** described the uses allowed in the Commercial General district and he also noted that the applicant has already gotten site plan approval for their project. They still have to do traffic studies and do any necessary mitigation, and complete their stormwater management plan and other technical requirements, but this is a by-right use.

Chair Hess expressed sympathy with the concerns of the audience members but she noted that this is why, before you buy property, you need to check the zoning around you; these days you can check that online, which may not have been an option for some buyers.

Mr. Phil Palmer, original developer of the Heritage Lake development, said that he does see a few problems with the request which he described: The intent of the original plat was that each parcel was meant to be under unified control and not subdivided; this may or may not be restricted by documents, but he hasn't researched that yet. The second issue is that part of parcel PA encroaches into the roadway which is a platted tract owned by the Community Development District, so there's an error there as well. The last thing, which also needs to be verified, is that any development on that commercial tract and any change to the plat required the approval of developer; **Mr. Palmer** noted that is no longer him as he assigned those rights when he left the project, and he said he didn't know if the current owners got this approval. **Chair Hess** responded to these comments by noting that he needs to bring in those documents; Mr. Palmer agreed that this needed to be done. **Mr. Cullinan** sought to clarify which road was being encroached on; he said further review on this matter would take place. **Mr. Cullinan** also noted that the County doesn't enforce deed restrictions and covenants – that's a civil matter. Further discussion ensued on these points.

Ms. Lynette Henk first being sworn, then addressed the Board regarding her access in and out of her street being restricted by the traffic, and also mentioned the risk to the kids waiting on the road for school bus. **Chair Hess** noted that this meeting is not the proper venue for these comments; she suggested the speaker take those issues to the Commission.

Mr. Alan Solon, resident of Heritage Lake Park, first being sworn, asked if subdividing meant it could be sold for another commercial entity. **Chair Hess** responded that the subdivision happened when owner sold off a part of the property, noting that the property is big enough for more than one business.

Ms. Sandra Knapp, first being sworn, asked if the zoning information was available online in 1989; she believes she was given bad information at the time. She then asked what the process is for getting a rezoning; Mr. Moyer responded that first, you have to own the property you are seeking to rezone. Further discussion ensued with reference to the map.

Ms. Linda Decker asked if there is anything that can be done to stop this; **Chair Hess** explained property rights. **Ms. Decker** further stated that about a year ago, someone in the Zoning Department told her the land was residential and the sign was in error; she also said that many other people were told by realtors that the property wasn't commercial. She expressed great negativity about the coming development and the negative impact on property values of having this specific store being built there. **Mr. Cullinan** spoke on the subject of traffic generation studies and how they measure the traffic flow in response to Ms. Decker's question about possible road widening. Further discussion ensued, and **Mr. Moyer** sought to move the discussion back to the appropriate track.

Mr. Tom Stavely wanted to discuss some zoning information that he had found on the internet.

Mr. Roger Miller, representing the Heritage Lake Park Community Development District (CDD), stated that the CDD recognizes that there are no grounds to oppose the development but he expressed the CDD concerns about how the plat was submitted and disagreed that they own half that road. He just needed to get this point on the record.

Chair Hess reiterated that this isn't a rezoning request; this is about a plat which deals with the design of property that is already zoned. She suggested that audience members feel free to go to the Commission with their concerns, but be aware that they also can't change the property rights of the owner. She commented on the difference between how this was developed and how Punta Gorda Isles handled the same issues.

Mr. Sherman Drawdy, first being sworn, commented on the original development of this property.

- **Mr. Gravesen** moved to close the public hearing, second by **Mr. Vieira** with a unanimous vote.

Discussion

Mr. Bigness said he would have liked there to have been a representative of the Family Dollar here for this discussion, but otherwise he indicated he's OK with the petition.

Recommendation

Mr. Vieira moved that PP 14-10-01, be sent to the Board of County Commissioners with a recommendation of *Approval with one condition*, based on the findings and analysis in the staff report dated November 17, 2014, along with the evidence presented at today's meeting, second by **Mr. Gravesen** and carried by a unanimous vote.

PP-08-07-02

Quasi-judicial

Commission District IV

Tamiami Biscayne Properties, LLC is requesting a two-year extension to the Preliminary Plat approval for Tippecanoe Business Park. Smith & Wester, Inc. was granted Preliminary Plat approval by the Board of County Commissioners on October 21, 2008. The subdivision, consisting of ten (10) commercial lots is located on 17 acres, more or less, in Section 15, Township 40 South, Range 21 East, southwest of Biscayne Drive, northeast of El Jobean Road, and west of Eastwind Waterway

in Commission District IV. They are also requesting to transfer the plat into the name of the new owners.

Staff Presentation

Steven Ellis, Planner II, presented the findings and analysis of the petition requesting an extension and change of ownership, with a recommendation of Approval, based on the reasons stated in the staff report dated November 17, 2014.

Questions for Staff

Chair Hess indicated she had no questions, nor were there any from the other Board members.

Public Input

None offered.

- **Mr. Gravesen** moved to close the public hearing, second by **Mr. Vieira** with a unanimous vote.

Discussion

Chair Hess said she favored approval. **Mr. Vieira** asked if any site clearing had been done, and **Mr. Ellis** responded that none had been done.

Recommendation

Mr. Gravesen moved that application PP-08-07-02 requesting a two-year extension and transfer of the plat ownership be *Approved*, based on the findings and analysis in the staff report dated November 17, 2014, along with the evidence presented at today's meeting, second by **Mr. Vieira** and carried by a unanimous vote.

PP-09-02-02

Quasi-Judicial

Commission District II

Primerica, on behalf of their client, Punta Gorda Acquisitions II, LLC, has applied for a two-year extension of their Preliminary Plat approval for a commercial subdivision called Punta Gorda Crossing, consisting of ten (10) commercial/industrial lots, on 99.26 acres, more or less, located within the ECAP, on Duncan Road between I-75 and Golf Course Boulevard, in Sections 3 & 4, Township 41 South, Range 23 East, in Commission District II. They have also requested a plat transfer, which will move the ownership of the plat from Punta Gorda of Charlotte County, LLC into the name of the new owners.

Staff Presentation

Steven Ellis, Planner II, presented the findings and analysis of the petition requesting an extension and change of ownership, with a recommendation of Approval, based on the reasons stated in the staff report dated November 17, 2014, extension and change of ownership.

Questions for Staff

None.

Public Input

Mr. Brooks Armstrong, neighbor, having been sworn, asked what kind of industries could go in here; Chair Hess explained the plan was for a ten-unit commercial structure for any commercial industrial business. She agreed that these could generate noise, but buffering between that facility and the residential neighborhood would be required. Mr. Cullinan noted that this project is in the ECAP Industrial Park; he described Municode online as a source for review of the zoning code to

Minutes of Regular Meeting Continued

December 8, 2014 @ 1:30 P.M.

These minutes have been approved by the Charlotte County Planning and Zoning Board.

see what would be allowed. Chair Hess added a comment that ECAP is our industrial park and these uses are what the County is trying to promote there. Further discussion ensued on the potential types of development. Mr. Armstrong's other question concerned Australian pines on the property; information regarding the removal of exotics was offered.

- **Mr. Gravesen** moved to close the public hearing, second by **Mr. Vieira** with a unanimous vote.

Discussion

None.

Recommendation

Mr. Gravesen moved that application PP-09-02-02 requesting a two-year extension and transfer of the plat ownership be *Approved*, based on the findings and analysis in the staff report dated November 17, 2014, along with the evidence presented at today's meeting, second by **Mr. Chandler** and carried by a unanimous vote.

There being no further business to come before the Board, the meeting was adjourned at 3:19 p.m.

Mr. Cullinan reminded the Board members that televising of the meeting will begin in January.